

BAY DELTA CONSERVATION PLAN DRAFT EIS
Briefing Paper – May 12, 2014

Issue: Region 9 intends to rate the Bay Delta Conservation Plan (BDCP) Draft EIS as Ex. 5 - Deliberative

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- Implementation of the BDCP would result in diminished freshwater flows through the Delta, which would cause or exacerbate:
 - Potentially permanent violations of water quality standards
 - The Delta is currently listed as impaired for electrical conductivity (EC), chloride, and selenium pursuant to Clean Water Act Section 303(d). The operation and maintenance tunnels would contribute to or increase violations for these standards.
 - Increased concentrations of methylmercury from the restoration actions
 - Adverse effects on existing beneficial uses, such as municipal water supply, agricultural water supply, and protection of aquatic life;
 - USFWS and NMFS have issued “jeopardy” opinions for salmon and Delta smelt associated with the existing water supply network.
 - Multiple federal and state agencies and independent scientists conclude both increased freshwater flows and habitat restoration are needed to recover fish populations.
 - Project rests on scientifically unproven premise that habitat restoration alone will ensure species recovery; habitat restoration is assumed to be 100% successful.
- The DEIS is:
 - Inconsistent in its analysis of uncertainties, and assumes unsubstantiated conclusions which are favorable to the proposed project.
 - Incomplete in its analyses, analyzing the Proposed Project in greater detail than other alternatives.
 - Overly optimistic in the face of significant uncertainty regarding potential performance of the proposed tunnels and the viability of the proposed habitat restoration projects.
 - Inconsistent in its application of programmatic-level inputs and project-level analytic tools.
 - Extremely cumbersome (comprising 34,000 pages) and confusing.
 - Lacking evaluation of reasonable alternatives with potentially reduced impacts.
 - Lacking clear comparisons of impacts among the alternatives.
 - **Ex. 5 - Deliberative** federal lead agencies issued highly critical public comments on the ADEIS; their staffs have said the DEIS does not support the issuance of an ESA Section 10 permit; the DEIS acknowledges that it may not be used to support issuance of a CWA 404 permit.

Recommendation and Desired Outcome:

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Background:

- The BDCP is a Habitat Conservation Plan that is being developed to support the issuance of an

Incidental Take Permit under Section 10 of the Endangered Species Act for continued operation of Central Valley Project and State Water Project water facilities. A major component of the Proposed Project and most alternatives is construction and operation of tunnels (Conservation Measure 1) to convey 3,000-15,000 cubic feet per second of Sacramento River water 40 miles south under the Delta to the existing pumps. Although the document is officially the product of the lead federal agencies, USFW and NMFS; the California Department of Water Resources as lead State lead agency is directing the effort. The HCP and the EIS/EIR are funded by the water exporters (“the applicants”) and are being prepared by consultants directed primarily by DWR.

- The San Francisco Bay Delta Estuary is one of the largest and most important estuarine systems on the Pacific Coast of the United States.

EPA Involvement:

- EPA has been a cooperating agency since 2008. Region 9 staff have actively participated in meetings with the lead federal and state agencies during development of the BDCP and DEIS for several years.
- Senior EPA officials have participated in interagency meetings convened by CEQ for at least the past year, and have been briefed by Region 9, on several occasions, including our initial recommendation that the DEIS not be issued for public review until those issues were resolved, and our continuing recommendation that the DEIS be withdrawn, revised, and reissued for public review.
- EPA provided critical comments on the draft BDCP and the Administrative DEIS in April 2012 and July 2013, and verbally advised the lead agencies, on multiple occasions between July and December 2013, not to release the DEIS for public review until the substantive issues raised in our comments on the ADEIS were resolved.
- In November 2013, we advised federal and State lead agency staff that public issuance of the DEIS would likely put EPA in the position of issuing an adverse rating because fundamental issues had not been resolved. The lead agencies acknowledged this, but issued the DEIS, anyway.

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Interested Parties

- The federal lead agencies (USFWS, NMFS, and BOR) publicly provided highly critical comments on their own Administrative DEIS in July 2013, and have an ongoing list of outstanding issues.
- The Army Corps of Engineers have said they cannot use this document to support a Clean Water Act Section 404 permit decision.
- Independent scientists and public committees have weighed in critically with over half a dozen reports.
- Governor Brown supports taking action without delay.
- Senator Feinstein supports the BDCP; other Congressionals are mixed.
- Environmental organizations and in-Delta users are opposed.

Next Steps:

EPA's official DEIS comments and rating are due June 13th. An Ex. 5 - Deliberative is signed by the Regional Administrator.